

### §4110.3-1

specified in a grazing permit or lease and make changes in the grazing preference as needed to:

(1) Manage, maintain, or improve rangeland productivity;

(2) Assist in making progress toward restoring ecosystems to properly functioning condition;

(3) Conform with land use plans or activity plans; or

(4) Comply with the provisions of subpart 4180 of this part.

(b) The authorized officer will support these changes by monitoring, documented field observations, ecological site inventory, or other data acceptable to the authorized officer.

(c) Before changing grazing preference, the authorized officer will undertake the appropriate analysis as required by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Under NEPA, the authorized officer will analyze and, if appropriate, document the relevant social, economic, and cultural effects of the proposed action.

[71 FR 39504, July 12, 2006]

#### §4110.3-1 Increasing active use.

When monitoring or documented field observations show that additional forage is available for livestock grazing, either on a temporary or sustained yield basis, BLM may apportion additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan.

(a) *Additional forage temporarily available.* When the authorized officer determines that additional forage is temporarily available for livestock, he may authorize its use on a nonrenewable basis under §4130.6-2 in the following order:

(1) To permittees or lessees who have preference for grazing use in the allotment where the forage is available, in proportion to their active use; and

(2) To other qualified applicants under §4130.1-2.

(b) *Additional forage available on a sustained yield basis.* When the authorized officer determines that additional forage is available for livestock use on a sustained yield basis, he will apportion it in the following manner:

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(1) First, to remove all or a part of the suspension of preference of permittees or lessees with permits or leases in the allotment where the forage is available; and

(2) Second, if additional forage remains after ending all suspensions, the authorized officer will consult, cooperate, and coordinate with the affected permittees or lessees, the state having lands or responsibility for managing resources within the area, the interested public, and apportion it in the following order:

(i) Permittees or lessees in proportion to their contribution to stewardship efforts that result in increased forage production;

(ii) Permittees or lessees in proportion to the amount of their grazing preference; and

(iii) Other qualified applicants under §4130.1-2.

[71 FR 39504, July 12, 2006]

#### §4110.3-2 Decreasing active use.

(a) The authorized officer may suspend active use in whole or in part on a temporary basis due to reasons specified in §4110.3-3(b)(1), or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or documented field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180 of this part, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory, or other acceptable methods, the authorized officer will reduce active use, otherwise modify management practices, or both. To implement reductions under this paragraph, BLM will suspend active use.

[71 FR 39504, July 12, 2006]

#### §4110.3-3 Implementing changes in active use.

(a)(1) After consultation, cooperation, and coordination with the affected permittee or lessee and the state having lands or responsibility for managing resources within the area, the authorized officer will implement

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changes in active use through a documented agreement or by a decision. The authorized officer will implement changes in active use in excess of 10 percent over a 5-year period unless:

(i) After consultation with the affected permittees or lessees, an agreement is reached to implement the increase or decrease in less than 5 years, or

(ii) The changes must be made before 5 years have passed in order to comply with applicable law.

(2) Decisions implementing § 4110.3-2 will be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b)(1) After consultation with, or a reasonable attempt to consult with, affected permittees or lessees and the state having lands or responsibility for managing resources within the area, the authorized officer will close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section when the authorized officer determines and documents that—

(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, or insect infestation; or

(ii) Continued grazing use poses an imminent likelihood of significant resource damage.

(2) Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions will remain in effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay in accordance with § 4.472 of this title.

[71 FR 39504, July 12, 2006]

### § 4110.4 Changes in public land acreage.

#### § 4110.4-1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants

at the discretion of the authorized officer. Grazing use shall be apportioned under § 4130.1-2 of this title.

[53 FR 10234, Mar. 29, 1988]

#### § 4110.4-2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

(2) Grazing preference may be canceled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (national defense requirements in time of war, natural disasters, national emergency needs, etc.) before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed the fair market value of his or her interest in authorized permanent range improvements located on these public lands (see § 4120.3-6).

[43 FR 29067, July 5, 1978, as amended at 49 FR 6451, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984; 54 FR 31485, July 28, 1989; 60 FR 9963, Feb. 22, 1995; 71 FR 39505, July 12, 2006]

### § 4110.5 Interest of Member of Congress.

Title 18 U.S.C. 431 through 433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no